

2-17-10

**Testimony of Anthony J. Gagliano**

**2735 General Pershing, New Orleans, LA 70115**

**February <sup>17</sup>~~16~~, 2010**

**Representing Self**

I have come to this hearing to provide testimony and written materials relating to Item No. 7 of the legislature agenda relating to the composition, number of judges, election districts, and the effectiveness of the current districting of the courts of appeal.

The thrust of my testimony and the written materials that I present is encapsulated in the following propositions:

1. Louisiana has too many judges in the courts of appeal relative to the caseloads of these courts.
2. The number of surplus judgeships in the courts of appeal may be as high as 17 and is no lower than 10.
3. The cost of surplus judgeships in the courts of appeal may be as high as \$500,000 to \$750,000 per judge and in total costs somewhere between \$5 million and \$12.8 million.
4. The current circuit boundaries are significantly mal-apportioned in terms of number of judges, workloads, and costs.
5. The mal-apportionment of the courts of appeal contributes to inefficiency in case processing, bad judicial work habits, conflicts among the circuits, and the reluctance of some circuits to effectively use mediation, summary dispositions, and other innovative techniques.

6. The problem of surplus judgeships is not unique to the courts of appeal. The trial courts also have a significant number of surplus judgeships, perhaps as many as 30, depending on the way in which the system is restructured.
7. The problem of mal-apportionment in the courts of appeal should be addressed this year.
8. The problem of surplus judgeships in both the appellate and trial courts should be addressed before the 2012 and 2014 judicial elections.
9. To prepare for the reduction and redistribution of judgeships, the Legislature should request the Supreme Court to complete, before February 2012, a definitive analysis that would clearly indicate the number of surplus appellate and trial court judgeships in the state and that would recommend specific ways to better apportion the courts of appeal and distribute the workload of the trial courts.
10. To facilitate this difficult process, which is certainly threatening to some judicial careers, the Legislature should reiterate its commitment to all consent decrees and should enact legislation to provide, when needed, for golden parachutes, the reasonable extension of terms of office, partial delays in implementation, and the use of attrition over time.

In conclusion, I would like to say that the funding of unnecessary judgeships and support staffs is a luxury that Louisiana cannot afford in these difficult times, when so many other services are being blindly cut. Many judicial needs are now not being met because the scarce resources of the state are being misdirected to other things, like unnecessary judgeships and staffs. If

anything, Louisiana needs to invest more resources, not fewer, in programs and services relating to criminal and juvenile justice reform, delinquency, child abuse, child support, domestic violence, divorce and custody, drug-court, and other priorities that might, over time, actually prevent and reduce crime and rescue more families and children from the scourges of poverty, drugs, crime, poor educational opportunity, and the other inhumane conditions in which they are found.

## Analyzing the Need for Appellate Judgeships

The analysis of the need for appellate judgeships in a jurisdiction or an area should be based on two primary considerations: the calculation of the judicial year and judicial workday; and the methodologies and indicators used to measure judicial workload.

### The Calculation of the Judicial Year and Judicial Day

The calculation of the judicial year and day are two of the most important aspects used to determine the need for judgeships in a particular jurisdiction or area. The judicial year and judicial day calculations are used throughout the nation as a means of determining the amount of time, as expressed in hours or minutes, that are available to judges for administrative work and for the adjudication of cases.

In Louisiana, the Supreme Court has used the standard of 209 days for establishing the judicial year for the district courts and a minimum of 7.5 hours per day as the standard for the judicial day. These determinations may be calculated as follows:

365 Days	
Less Saturdays and Sundays	104
Less Holidays	15
Less Vacation Days	20
Less Sick Leave	10
Less CLE	7
Subtotal	156
Days Available for Administrative Work and Adjudication	209
Less Administrative Work (12%)	25 Days

Days Available For Adjudicative Work	184
Hours per Day for Adjudicative Work	6.5
Total Hours per Year for Adjudicative Work	1,196
Total Minutes per Year for Adjudicative Work	71,760

The Judicial Council of the Supreme Court has not adopted criteria for the judicial year and day for the courts of appeal, but, in the absence of such criteria, we may assume that the amount of time available for adjudicative work is about the same as that available for the trial courts – namely 71,760 minutes per judge.

The calculation of the judicial year and the judicial day varies considerably throughout the nation see, for example, Exhibit 1 below.

<b>Jurisdictions</b>	<b>Judicial Year</b>	<b>Judicial Day</b>	<b>Year</b>
<u>West Virginia</u> Circuit Court	209	6.5 hrs.	2006
<u>Minnesota Court</u> System	215	7.5 hrs	2002
<u>Iowa</u> District Courts	212	7.5 hrs	2008
<u>Montana</u> District Courts	212	8 hrs.	2007
<u>Arizona Superior</u> Yuma Court	217	6.2 hrs	2010
<u>Texas Courts</u>	215	5.5 hrs	2008
<u>Colorado</u> Court of Appeals	220	8	2005

The Colorado Court of Appeals provides for 1,760 hours in the judicial year (105,600 minutes), of which 500.3 hours (or 30,018 minutes) are assumed to be administrative

(judicial committee work, human resource issues, continuing education, public outreach, bar and legal association activities, general administrative work, and general non-case activities). 1,260 hours or 75,960 minutes are then left for adjudicative work (Source: Colorado Court of Appeals Workload Analysis, Final Report, September 15, 2005.)

## **Methodologies and Indicators**

Legislatures and courts throughout the nation use a variety of different methods and workload indicators to determine the number of judgeships needed in a jurisdiction or in an area. These methods range from expensive time and motion studies to simple calculations of filings per judge or calculations of the number of judges per capita or per 100,000 population.

In this paper, we will provide several types of analyses, which, when taken together, will clearly indicate that there are more appellate judgeships in Louisiana than needed and that those judgeships are poorly apportioned throughout the state.

### **1. The Supreme Court Delphi Method**

The Louisiana Supreme Court uses a Delphi technique to indicate the need for judgeships in both the courts of appeal and the trial courts. The Delphi technique involves a group of selected judges and other knowledgeable persons in a process of determining by consensus, within the context of the judicial year and day used by the Louisiana Supreme Court, the average amount of time that should reasonably be spent on either each type of case or on each type of procedure.

The amount of time spent on types of cases or procedures in the courts of appeal and the trial courts is based on either filings or dispositions that are measured in terms of work points – weights that are assigned to each type of case or procedure based on assumptions regarding the amount of reasonable time it takes to process a particular type of case or procedure. More complex cases and procedures require longer processing times than simpler cases or procedures. Essentially, work points may be regarded as a substitute for minutes and can be related to the times expressed in the judicial year and day. If the adjudicative time available in the judicial year and day for each court of appeal judge is 71,760 minutes then the maximum amount of work points assigned to each judge for adjudicative work is equivalent to 71,760 minutes.

The criteria and work point values for the Louisiana courts of appeal were first developed in 1981 by the Judicial Council of the Supreme Court as a means of assessing the need for new judgeships. They were not developed with the intention of potentially using them to eliminate surplus judgeships, even though they clearly can be used, with some tweaking, for that purpose.

The most recent attempt to change the work point values for the courts of appeal was in 2004, when Dr. Hugh Collins, the Judicial Administrator of the Court at that time, presented revised criteria to a newly appointed committee established by the Court for that purpose. The overall work point value per judge for adjudication proposed at that time was 2,500 work points. The proposed work point value for each type of disposition was:

2004 Methodology

	<u>Dispositions</u>	
	<u>Civil</u>	<u>Criminal</u>
• Disposition of an appeal by formal opinion, memorandum opinion or summary disposition		
• Granting of writ	12	9
• Denial of a writ	9	7
• Writ not considered, dismissed, or Refused	3	3

Unfortunately, those recommendations were never finalized by the Committee or by the Judicial Council, leaving the Court and the legislature without any definitive criteria for assessing the number of judges needed or for suggesting how these judgeships should be allocated by circuit.

Nevertheless, despite the lack of definite, official criteria, the 2004 work point values, with some adjustments, can still be used to indicate, in a general way, answers to these questions. In the pages that follow we will use several methods to indicate both how many judges are needed and how these judgeships might be apportioned.

Some will undoubtedly object to these methods of analysis and to the conclusions that we have drawn from them. If so, let those raising such objections submit their own methodologies and conclusions for public and legislative review. The issues raised in this paper are far too important to be ignored or given lip service. They need to be seriously addressed, not with simply more planning, but with action.

No matter what methods of analysis are used, some facts are incontrovertible:

- Louisiana cannot keep creating judgeships in areas where population and filings are growing and not take away judgeships in declining areas where they are no longer needed;
- Louisiana should not continue to pay for unneeded judgeships and all the costs associated with their support (about \$500,000 to \$700,000 per judge), when there are other judicial needs that are being neglected or short-changed, for example, criminal and juvenile justice reform, better prosecution and indigent defense, and better court services for children and families;



- Louisiana ought to examine why the courts of appeal need the same number of judges today that they had in 2003, when the caseloads of every circuit were much higher than they are today.

### Method 1

Method 1 is the method proposed in the 2004 recommendations that were never finalized and approved by the Judicial Council. This method is based on the disposition of appeals and writs rather than on filings.

The results of this method are provided for 2009 in Table 1. These results indicate that there is a need for about 36 judges, instead of 53 and that there is a need for reapportionment into new circuits or for a more equal adjustment of the current workloads as suggested in the Table.

### Method 2

Method 2 is based on filings, instead of dispositions. It uses different case weights than Method 1 and expresses those weights in minutes per filing than in work points. The case weights are:

	<u>Minutes per Filing</u>	
	<u>Civil</u>	<u>Criminal</u>
Appeals Filed	717.5	493
Writs Filed	433.4	258.

The case weights assigned to civil and criminal appeals are equivalent to the case weights expressed in work points in Method 1. The case weights assigned to all civil and criminal writs granted, denied, not considered, and refused are equivalent to 9 work points per filing.

The results of this method are provided in Table 2. The results indicate that there is a need for 42.23 judges, instead of 53 and that there is a need for reapportioning into new circuits or for more equally distributing the workload of the current circuits as indicated in the Table.

### Method 3

Method 3 focuses on the *judicial minutes currently available for processing appeals and writs in each circuit and in all circuits*. The method identifies the fastest judicial time in terms of minutes per disposition for the processing of *total cases and then assigns that value to the dispositions in each circuit and to the total of all circuits*.

Like the previous two methods, the method does not include analyses of staff capabilities, information systems, and other resources in the processing of cases, nor does it analyze the use of mediation, summary dispositions and other techniques for expediting cases, although all of those factors are also important in assessing the need for fewer or more judgeships and for apportioning cases more reasonably.

The method exclusively focuses on judicial time and raises the following questions:

- Why does the time for processing total dispositions vary so much from circuit to circuit?
- Why does the circuit with the most cases have the fastest processing time?
- Why were all of the circuits able to process heavier caseloads faster pre-Katrina than post-Katrina even though they had the same number of judicial resources?

When using this method of analysis, one should not assume that faster processing times are better and slower times are worse. Sometimes faster times may reduce the quality of judicial review or limit access to justice. On the other hand, slower times may waste judicial resources and provide for great variances in judicial work load. Both extremes should be avoided and should be balanced by these considerations:

- In 2003 (see Table 6D), average minutes per disposition were 387 minutes, which shows a disposition time that is slightly slower than the minutes per disposition benchmark of the 1<sup>st</sup> Circuit in 2009 (379 minutes per disposition), which was labeled in Table 2 as the fastest disposition time in that year;
- If we use processing times of each of the other Circuits and the average of the other four circuits in 2009 as benchmarks, we get the following results:

<b>Circuit</b>	<b>Benchmarks</b>	<b>Judges Needed</b>
3 <sup>rd</sup>	603	61
2 <sup>nd</sup>	729	74
4 <sup>th</sup>	518	53
5 <sup>th</sup>	557	57
Avg	602	61

## Sources

Table 1 is based on unpublished 2009 data from the CARS data base of the Louisiana Supreme Court, which is the only source of complete disposition data.

Table 2 is based on filing data from the Annual Report of the Louisiana Supreme Court.

Table 3 is based on disposition 2009 disposition data from CARS.

Table 4 is based on disposition data from CARS and on the count of 2009 judges provided in the 2009 Annual Report of the Louisiana Supreme Court.

Table 5 is based on 2008 data from the Court Statistics Project, Examining the Work of the State Courts, 2009.

Table 6A-6D is based on filing and disposition data from the Annual Reports of the Louisiana Supreme Court from 2003-2009.